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5  
6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8 In Re Bard IVC Filters Products Liability  
9 Litigation

10 No. MD-15-02641-PHX-DGC

11 **APPLICATION TO SERVE AS LOCAL, CO-  
12 LEAD AND LIAISON COUNSEL**

13 Pursuant to the Court's Order of September 15, 2015, Gallagher & Kennedy, P.A. (G&K),  
14 through Robert W. Boatman, submits this Application to serve as Local, Co-Lead and Liaison  
15 Counsel for Plaintiffs in the Bard IVC Filters MDL.

16 **I. INTRODUCTION**

17 Robert Boatman requests that the Court approve his service in several Plaintiffs' leadership  
18 roles in this MDL. Because the Court's order suggests that the Court is evaluating individuals, this  
19 will discuss my experience and qualifications. However, it is my intention, with the permission of  
20 the Court, that a team of lawyers from Gallagher & Kennedy, P.A. ("G&K") work with me in these  
21 leadership roles. For this reason, this Application will also discuss the relevant background and  
22 qualifications of the other G&K attorneys that will be working with me in this MDL.

23 This Application will address the criteria requested by the Court in the order set forth by the  
24 Court in its September 15, 2015, order (Doc. 72).

1       **II. WILLINGNESS AND ABILITY TO COMMIT TO THE CASE**

2       G&K has committed five shareholders (Robert W. Boatman, Shannon L. Clark, Paul L.  
3       Stoller, Mark S. O'Connor, and Lincoln Combs), one associate, and one paralegal to this matter. All  
4       of the attorneys involved in this MDL are elite practitioners in this area, and G&K has the capacity  
5       for and is committed to additional staffing if necessary.

6       Each of the attorneys participating in the case has requested to be a part of the Plaintiffs'  
7       MDL team and is committed to the case as a top priority. The G&K attorneys have met with a  
8       number of the other potential Steering Committee members, and Bard's counsel, and anticipate based  
9       on those meetings and continuing communications that there will be a good working relationship  
10      with all parties.

11      My own background and expertise are discussed in Sections III and IV, below. A short  
12      summary of the relevant background and experience of the other team members (which also responds  
13      to criteria 2 and 3) follows. All of our respective CVs are attached as exhibits to this Application.

14       **A. Shannon L. Clark**

15      Shannon Clark is a shareholder in the personal injury and wrongful death litigation group at  
16      G&K and is also a member of the G&K Board of Directors. For over 15 years, Shannon has  
17      advocated for victims of negligent and wrongful conduct, garnering in excess of \$200,000,000 in jury  
18      verdicts, arbitration awards, mediation results, and negotiated settlements for personal injury,  
19      wrongful death, and legal malpractice clients. Prior to entering private practice, Shannon was a law  
20      clerk for the Honorable Mary M. Schroeder on the Ninth Circuit Court of Appeals.

21      No stranger to coordinated and consolidated litigation, Shannon has successfully represented  
22      dozens of tread separation or rollover accident victims in product liability cases against Ford Motor  
Company, Bridgestone/Firestone, Inc., Bridgestone Corporation, Dunlop Tire Company, Cooper Tire

1 and Rubber Company, Kuhmo Tire Company, Michelin North America, and most major tire  
2 manufacturers. This work included working with me as co-lead counsel on Arizona's state court  
3 equivalent to the federal Ford Explorer/Firestone Tire MDL, in addition to handling federal lawsuits  
4 in the Ford/Firestone MDL. He also worked with me as a member of a national team representing  
5 victims of fuel-fed fires caused by rear-impact collisions in Ford Crown Victoria Police Interceptors.  
6 And he and other G&K attorneys filed the lead case and played a central role in *In re Indianapolis*  
7 *Life Insur. Co. I.R.S. § 412(i) Plans Life Insur. Marketing Litig.*, MDL No. 1983 (N.D. Tex.).  
8 Shannon also was instrumental in coordinating efforts amongst three mass actions (arising from  
9 crashes in California, Utah and Texas) against a major motor coach manufacturer to resolve claims  
10 involving over 100 deaths and catastrophic injuries. Specific to the product liability claims at issue in  
11 this MDL, Shannon has handled medical drug and medical device lawsuits involving hip  
12 replacements (Stryker), experimental drugs (Amgen), transvaginal mesh (multiple manufacturers,  
13 MDL Nos. 2325-27), and drug delivery systems (Pfizer).

14 **B. Paul L. Stoller**

15 Paul Stoller is a shareholder in the commercial litigation group at G&K. Mr. Stoller has  
16 extensive experience in complex litigation in federal court, including class actions and MDL  
17 proceedings. He has been counsel for both plaintiffs and defendants in complex cases in Districts  
18 across the country.

19 For example, Mr. Stoller is counsel for the class representatives and the putative class in a  
20 large data breach case currently pending in the District of Arizona. He was lead counsel for a  
21 national hotel company in the successful defense of antitrust claims raised in an MDL in the Northern  
22 District of Texas. *In re Online Travel Co. (OTC) Hotel Booking Antitrust Litigation*, 2014 WL  
626555 (N.D. Tex. Feb. 18, 2014). Mr. Stoller served as lead counsel for a national trucking

1 company in defense of five consolidated national class action lawsuits in the Western District of  
2 Tennessee alleging breach of contract, negligence, unjust enrichment, and Consumer Protection Act  
3 violations. He has also been lead and associate counsel for national insurance companies in defense  
4 of multiple class actions raising various claims in the Districts of Arizona and Wyoming and the  
5 Northern District of California.

6 **C. Mark S. O'Connor**

7 Mark O'Connor is a shareholder in the personal injury and wrongful death litigation group at  
8 Gallagher & Kennedy and is certified by the Arizona Board of Legal Specialization in Personal  
9 Injury and Wrongful Death. He is a seasoned and experienced trial lawyer who has served as lead  
10 counsel in numerous jury trials. The majority of Mark's career as a trial lawyer has been devoted to  
11 the representation of victims of catastrophic injury and wrongful death.

12 Mark has handled a wide array of cases in the areas of medical malpractice, elder abuse,  
13 trucking and transportation, sexual abuse and harassment, aviation disasters, dram shop, government  
14 liability, product liability and defective medical devices. Many of Mark's cases involve complex  
15 medical and scientific issues, and he has developed substantial expertise in and regularly works with  
16 experts in medicine, science, engineering, and other technical areas. Mark is also involved in the  
17 firm's mass tort practice, focusing on the representation of women injured by transvaginal mesh in  
18 MDL Nos. 2325-27.

19 Beginning in July 2002, Mark became involved in the pro bono representation of victims of  
20 families of the September 11, 2001, terrorist attacks to the Victim's Compensation Fund. Mark's  
21 outstanding service to the September 11<sup>th</sup> victims was recognized by Trial Lawyers Care and the  
22 Association of Trial Lawyers of America.

1                   Mark O'Connor is an AV rated lawyer by Martindale-Hubbell and has been listed in the 2016  
2 edition of *The Best Lawyers in America*, 2015 edition of *Southwest Super Lawyers, Arizona's Finest*  
3 *Lawyers* and the *National Trial Lawyers, Top 100 Trial Lawyers in America* and the *National*  
4 *Association of Distinguished Counsel, Nation's Top One Percent*. Mark is also a fellow of the  
5 *International Society of Barristers*.

6                   **D. Lincoln Combs**

7                   Lincoln Combs is a shareholder in the personal injury and wrongful death litigation group at  
8 G&K. For the last seven years, he has practiced almost exclusively representing injury victims,  
9 focusing his practice on products liability, mass torts, and appellate advocacy. Prior to entering  
10 private practice, he served as a law clerk to the Honorable Andrew D. Hurwitz on the Arizona  
11 Supreme Court.

12                   Lincoln has been heavily involved in mass torts, class actions, and MDL proceedings since  
13 2008. He worked extensively with Shannon and me on *In re Indianapolis Life Insur. Co. I.R.S. §*  
14 *412(i) Plans Life Insur. Marketing Litig.*, MDL No. 1983 (N.D. Tex.), with Paul and Shannon on the  
15 data breach class action, and has worked both with other G&K partners and separately on several  
16 mass tort projects. Lincoln's recent mass tort work includes both those that have been accepted for  
17 centralization, *see* MDL Nos. 2325-27 (S.D.W.V.) (multiple MDLs against different transvaginal  
18 mesh manufacturers all centralized before the Honorable Joseph R. Goodwin), and those where  
19 centralization was denied, *see In re Ambulatory Pain Pump-Chondrolysis Prods. Liab. Litig.*, MDL  
20 No. 2139, 2010 WL 1790214 (J.P.M.L. May 5, 2010). He currently oversees and coordinates G&K's  
21 cases in the transvaginal mesh MDL, and regularly attends mass tort conferences to monitor updates  
22 in several drug and medical device litigations where G&K has an interest or involvement.

1           **III. ABILITY TO WORK COOPERATIVELY WITH OTHERS**

2           Throughout my 31 years of practice, I have had the opportunity and responsibility to work  
3 with others in similar large litigations. Among the most relevant to this case are the following:

4           **A. 2010 Four Corners Bus Crash**

5           In 2009, a tour bus returning from a ski trip in Telluride ran off the road and rolled. Twelve  
6 passengers were killed and 38 passengers were injured. The litigation over the crash involved over  
7 60 Arizona plaintiffs and 20 lawyers or law firms in claims against the driver, the tour company, the  
8 State of Utah, and the bus manufacturer. The product liability claim (for failure to provide seat belts  
9 on the bus) required cooperation among lawyers from Texas, California, and Arizona. I served as co-  
10 lead counsel in successfully prosecuting the cases against all four defendants. The product liability  
11 case required not only proving the defect, but navigating through the manufacturer's bankruptcy  
12 proceedings and federal preemption issues. Coordination was required not just amongst the cases in  
13 three states, but also amongst all victims so that we could present a united front and allocate funds  
from the settlements.

14           **B. Ford Explorer and Firestone ATX Tire Cases**

15           In 2001, I served as co-lead counsel for all the consolidated Ford Explorer and Firestone ATX  
16 tire cases in the State of Arizona. This required coordinating the efforts of the plaintiffs and  
17 cooperating with the defendants in the prosecution of these product liability claims.

18           **IV. PROFESSIONAL EXPERIENCE IN THIS TYPE OF LITIGATION**

19           The majority of my professional career has been working on personal injury and wrongful  
20 death cases, with my primary focus being product liability. My CV provides details of many of these  
cases. Among the most important for this litigation are the following:

1                   **A.        National Coordinating Counsel for Ford**

2                   As a young attorney (1985-1888), I worked as an associate at Skadden, Arps, Slate, Meagher  
3                   & Flom in their product liability group. I worked on the team that served as national coordinating  
4                   counsel for Ford, defending Ford in airbag defect claims. In that capacity, I worked with experts and  
5                   coordinated discovery responses for cases against Ford throughout the United States. I also had the  
6                   opportunity to observe the work of the top plaintiffs' lawyers in the United States who were  
7                   prosecuting those cases.

8                   **B.        Radar Gun Litigation**

9                   From approximately 1990-1992, I served as co-lead plaintiffs' counsel in the first product  
10                   liability trial alleging that the electromagnetic fields from a product caused cancer in the consumers.  
11                   In that case, over 200 police officers throughout the United States had lymphoma, leukemia, or  
12                   testicular cancer, which we alleged was due to their use of radar guns. In a month-long trial in  
13                   federal court in San Francisco, I had the responsibility of briefing difficult *Daubert* and summary  
14                   judgment issues as well as presenting and cross-examining top experts from across the United States  
15                   on product defect and cancer causation issues.

16                   **C.        Defective Product Cases**

17                   Over the past 31 years, I estimate I have handled over 100 product liability cases involving all  
18                   types of products. Among the most noteworthy include the following:

19                   **1.        Tread Separation/Rollover Cases**

20                   I have handled dozens of tread separation, vehicle stability, or rollover cases. These are  
21                   complex cases involving a substantial investment of time and money. They include identifying and  
22                   examining experts on issues such as proving the defect, bio-mechanics, accident reconstruction, and a  
23                   wide variety of damages.

## 2. Park/Reverse Cases

In approximately 1998, I was hired to represent the family of an elderly woman killed when the transmission in her Chevy truck slipped from park to reverse and ran her over. I coordinated with other plaintiffs' counsel with similar cases around the country and established a huge database of hundreds of other similar incidents. I also took several Rule 30(b)(6) depositions dealing with the defect and defendants' design and warning deficiencies. The case was defended by Snell & Wilmer (local counsel for Bard in this case). The case went to trial in November of 1999, and I obtained a verdict of \$7,000,000 in compensatory damages and \$10,000,000 in punitive damages.

Following my work in the Ford park-to-reverse case, I was hired to serve as co-counsel, with the responsibility of proving the defect, in a national class action against Chrysler. The class action was successful.

### 3. Fuel Tank Litigation

I was part of the G&K team that represented police officers in Arizona and across the United States that were burned or killed in accidents involving Crown Victoria police vehicles. The highest profile case was the case of Phoenix Police Officer Jason Schechterle. The litigation involved multiple defect and proof issues that I expect will be applicable to the Bard IVC filter litigation, including statistical issues relating to frequency of the defect, notice, and other similar incident evidence issues.

#### 4. Ford Escape Cases

Shannon and I were the first attorneys in the United States to discover and report a widespread defect in the Ford Escape that caused the vehicles' throttle to jam and accelerate uncontrollably. Our work (along with media and public interest groups) led to an investigation by NHTSA into the defect, acknowledgment of the defect, and the recall of several hundred thousand

1 vehicles by Ford, as well as the imposition of a \$17,350,000 fine against Ford by NHTSA for its  
2 failure to timely report the defect. We continue to prosecute these cases across the country.

3 **5. Medical Device Litigation**

4 I have prosecuted a defective medical device claim against Stryker to conclusion. That case  
5 involved a defective pain pump causing chondrolysis and involved claims dealing with both  
6 defendants' failure to warn and with defendants' compliance with applicable FDA rules.

7 I have also been a part of the G&K team dealing with other medical device/mass tort cases,  
8 including the transvaginal mesh litigation and claims against the manufacturers and marketers of  
9 testosterone.

10 **V. ACCESS TO RESOURCES TO ADVANCE LITIGATION IN A TIMELY MANNER.**

11 G&K is well-prepared to prosecute the first mass tort MDL ever centralized in Arizona as co-  
12 lead and local counsel.

13 **A. Financial**

14 G&K is a large, full-service firm that has the financial resources necessary to litigate an MDL.  
15 G&K routinely advances hundreds of thousands of dollars in its product liability cases and is willing  
16 to do so here.

17 **B. Personnel**

18 As set forth in Section II, G&K has a team of six (6) lawyers (and more, if necessary)  
19 prepared to work on this case.

20 **C. Experience**

21 While my background is primarily in product defect litigation, I also have significant  
22 experience with MDLs, medical device cases, and complex litigation. My partners' experience  
amplifies and supplements my own experience in these areas. I believe the team we have assembled  
has the experience necessary to handle any issue that may come up in this litigation. The G&K team

1 has already made meaningful contributions to work and projects on these cases, and, with the Court's  
2 permission, will continue to do so.

3 **D. Facilities**

4 G&K offices and staff can provide the facilities and support necessary for the plaintiffs' work  
5 required in this case.

6 **VI. SUPPORT OF OTHER ATTORNEYS**

7 G&K has already hosted several meetings in its Phoenix offices with many of the Plaintiffs'  
8 attorneys involved in the Bard litigation, including many that are expected to be on the Plaintiffs'  
9 Steering Committee. I believe that the proposed team of Ramon Lopez and I as co-lead counsel is  
10 supported by the majority, if not all, of those who have expressed an interest in this litigation.

10 **VII. CONCLUSION**

11 For the foregoing reasons, G&K, through Robert W. Boatman, respectfully requests this  
12 Court's approval in his appointment as local counsel, and as Co-Lead and Liaison counsel with  
13 Mr. Ramon Lopez of Lopez McHugh LLP in this matter.

14 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of October, 2015.

15 GALLAGHER & KENNEDY, P.A.

16 By:/s/Robert W. Boatman

17 Robert W. Boatman

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*Attorneys for Plaintiffs Lessie Tillman,  
Casey Wyatt, Luis Castillo and Denise O'Neil*

1 I hereby certify that on this 9<sup>th</sup> day of October, 2015, I electronically transmitted the attached  
2 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of  
3 Electronic Filing.

4 /s/Mary E. Torrez

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